BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DANNY GENE WEEKS	)	
Claimant	)	
	)	
VS.	)	
	)	
SKYCOM INC.	)	
Respondent	)	Docket No. 1,021,757
	)	
AND	)	
	)	
LIBERTY INSURANCE CORP.	)	
Insurance Carrier	)	

ORDER

Claimant requests review of the June 10, 2005 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

It was undisputed claimant suffered accidental injury on December 29, 2004, while working for respondent. Claimant provided notice of the accident but did not request medical treatment as he thought his neck and shoulder pain would resolve with time. On February 10, 2005, the claimant was at home and while stretching with his arms above his head heard a pop and experienced immediate pain radiating down into his arm.

The claimant sought medical treatment alleging that the incident at home was a natural and probable consequence of his December 29, 2004 work-related accident. Conversely, respondent denied claimant's medical condition was the result of his work-related accident. Respondent argued claimant had suffered a separate, distinct intervening accident at his home. The Administrative Law Judge (ALJ) found the claimant suffered an intervening accident at home and therefore denied benefits.

The claimant requests review of whether his medical condition is the direct and natural consequence of his December 29, 2004 work-related accident.

Respondent argues the claimant's current condition is not a natural and probable consequence of claimant's accidental injury on December 29, 2004, but instead, the result

of a new and separate intervening accident at claimant's home on February 10, 2005. Accordingly, the respondent requests the Board to affirm the ALJ's Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

On December 29, 2004, claimant and a co-worker were hanging a plasma television on a wall. Claimant testified he was in an awkward position and he felt a sharp pain in his neck. After installing the television on the wall, he then got off the ladder and that's when he realized he had injured himself. Claimant advised his supervisor, Tom Price, about the incident but did not request any medical treatment at that time because he thought he had "just tweaked myself and got myself out of whack a little bit and it would be fine."[1] Claimant continued to work following the incident but apparently, because of a reduced workload, he did not work every day.

Claimant testified that the pain in his neck and right shoulder blade improved after three or four days but then remained constant with good days and bad days. Claimant denied that the pain in his neck and shoulder had completely resolved before the incident at home.

On the morning of February 10, 2005, claimant was getting ready for work when he stretched and heard a pop in his neck. He immediately experienced a sharp pain sensation down his shoulder and into his arm. Claimant agreed that he had no arm pain before this incident. The MRI performed on February 16, 2005, revealed degenerative bulging disks and a herniated disk at C7-T1. At preliminary hearing, the claimant continued to complain of neck, right shoulder blade and arm pain.

Dr. Mark W. Penn opined the claimant's injury on December 29, 2004, weakened and damaged his C7-T1 disk. Based upon a reasonable degree of medical certainty, the doctor further opined the stretching incident on February 10, 2005, would not have caused any problems if the disk had not been previously injured. The doctor noted:

> Mr. Weeks has reported to me that he injured his neck 12/29/04 while moving a plasma TV during the course of his employment at Skycom. Mr. Weeks first came to see me on 2/10/05 due to severely increased neck and right upper extremity symptoms. The increase occurred that morning when he stretched his back and neck. It is my opinion that this was due to the 12/29/04 injury which

[1] P.H. Trans. at 15.

> damaged and weakened his C7-T1 disc. The stretching would not have caused any problems if the disc had not been previously injured.[2]

In a letter dated May 12, 2005, Dr. K. N. Arjunan opined the claimant was symptomatic from the disk herniation at the C7-T1 level on the right side due to the December 29, 2004 injury and the subsequent event on February 10, 2005. The doctor further opined the C7-T1 disk herniation was an acute event which brought about the pain and right upper extremity symptoms. The doctor opined:

> It is my opinion that Mr. Weeks is symptomatic from the disc herniation at the C7-T1 level, on the right side, and that this is related to the event of December 29, 2004, and the subsequent event of February 10, 2005. When talking to him, I asked him specifically whether he had any previous neck related pain, and Mr. Weeks denied it. He said he had lower back problems which would occur once or twice a year, which would respond to rest. He does have pre-existing disc degeneration in the cervical spine, as evidenced by the findings on the plain cervical spine x-rays, which indicate a chronic change. I think the disc herniation at C7-T1 was an acute event, which brought about the symptoms of pain down the right upper extremity.[3]

The ALJ relied upon Dr. Arjunan's opinion that the herniation was an acute event that precipitated the pain into claimant's arm and determined that event occurred while claimant was at home. The ALJ analyzed the facts in the following manner:

> The [C]laimant has presented an opinion from a chiropractor to the effect that but for the initial insult to the neck the stretching at home would never have resulted in further harm. The [R]espondent presented a report from Dr. Arjunan which stated that the [C]laimant's symptoms are attributable to both incidents, and that the herniation was an acute event.
>
> This Court has consistently held that where an event aggravates a preexisting condition, especially to the point that treatment is now required, that event constitutes an accident as that term is defined by the workers compensation act. At times this works to the advantage of the employee and at other times not. An exception to this analysis is where the Court finds that the original insult was so severe that further injury was inevitable, that almost any incident would produce a deterioration and a need for treatment. In other words, an accident waiting to happen.
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> In the case at bar the Court does not find that the accident of December 29 so compromised the [C]laimant's neck that it was inevitable he was going to suffer further injury. He was able to work for another month, and his symptoms were

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[2] *Id.*, Cl. Ex. 1.

[3] *Id.*, Cl. Ex. 11.

> resolving, until a specific event at home caused the acute herniation. The Court finds this constitutes an intervening accident and the request for benefits is denied.[4]

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act. In *Jackson*[5], the Court held:

> When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury. (Syllabus 1).

But the *Jackson* rule does not apply to new and separate accidental injuries. In *Stockman*[6], the Court attempted to clarify the rule:

> The rule in *Jackson* is limited to the results of one accidental injury. The rule was not intended to apply to a new and separate accidental injury such as occurred in the instant case. The rule in *Jackson* would apply to a situation where a claimant's disability gradually increased from a primary accidental injury, but not when the increased disability resulted from a new and separate accident.

In *Stockman*, claimant suffered a compensable back injury while at work. The day after being released to return to work, the claimant injured his back while moving a tire at home. The *Stockman* court found this to be a new and separate accident.

In *Gillig*[7], the claimant injured his knee in January 1973. There was no dispute that the original injury was compensable under the Workers Compensation Act. In March 1975, while working on his farm, the claimant twisted his knee as he stepped down from a tractor. Later, while watching television, the claimant's knee locked up on him. He underwent an additional surgery. The district court in *Gillig* found that the original injury was responsible for the surgery in 1975. This holding was upheld by the Kansas Supreme Court.

In *Graber*[8], the Kansas Court of Appeals was asked to reconcile *Gillig* and *Stockman*. It did so by noting that *Gillig* involved a torn knee cartilage which had never

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[4] ALJ Order (June 10, 2005) at 1.

[5] *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

[6] *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 263, 505 P.2d 697 (1973).

[7] *Gillig v. Cities Service Gas Co.*, 222 Kan. 369, 564 P.2d 548 (1977).

[8] *Graber v. Crossroads Cooperative Ass'n*, 7 Kan. App. 2d 726, 648 P.2d 265, *rev. denied* 231 Kan. 800 (1982).

properly healed. *Stockman*, on the other hand, involved a distinct reinjury of a back sprain that had subsided. The court, in *Graber*, found that its claimant had suffered a new injury, which was "a distinct trauma-inducing event out of the ordinary pattern of life and not a mere aggravation of a weakened back."

Here, the Board finds this circumstance to be more akin to that found in *Gillig*, rather than *Stockman*. Claimant's neck condition, while improved, had not completely resolved. And the improvement in his condition could, in part, be attributable to the fact that he did not work every day after the incident hanging the plasma TV because of a reduction in business. Moreover, Dr. Penn concluded claimant's condition was caused by the work-related incident and Dr. Arjunan agreed that claimant's condition was related to both the work-related incident as well as the incident at home.

In situations such as this, there is often a very fine line between what would be described as a new and separate accidental injury versus a natural consequence of the original injury. In this instance, based upon the record compiled to date, the Board finds that claimant's condition did arise out of his employment with respondent and is a natural consequence of the original injury with respondent. Accordingly, the Board reverses the ALJ's Order.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.[9]

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated June 10, 2005, is reversed and remanded to the Administrative Law Judge for further orders consistent herewith.

IT IS SO ORDERED.

Dated this _____ day of August 2005.

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BOARD MEMBER

c: Frank S. Eschmann, Attorney for Claimant
Lynn M. Curtis, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[9] K.S.A. 44-534a(a)(2).